02980101P.LOF

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0101P
Income Tax Penalty
Calendar Years 1994, 1995, 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8-1-10-2.1(d), 45 IAC 15-11-2

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer, incorporated under the laws of Indiana on November 25, 1945 was assessed additional gross income tax for Sales of Stock in Company A and Company B for calendar year 1995. Taxpayer is not taxable in any other state.

Taxpayer is an Indiana corporation that sold its trademark and stock of a wholly owned foreign corporation and a subsidiary based in Illinois. Negotiations for sales of the intangibles did not take place within Indiana. The taxpayer removed the sale of stock income from the gross income figure as nontaxable receipts and did not include its sales in the apportionment factor.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer protests the imposition of the penalty for failure to report gross income. Taxpayer argues that gross income on the sale of stock, the issue raised in the audit, has not appeared in prior Indiana income tax audits for the taxpayer nor has there been a court case to date with facts comparable to this case to give specific guidance on the treatment.

Taxpayer requests penalty be waived based upon their reliance on 45 IAC 1-1-119(e) which states:

> Sales of stock to nonresidents made through Indiana or nonresident brokers. See Freeman v. Hewit, 329 U.S. 249 (1946); also margin transactions and dealings in commodities futures carried on through securities exchanges in other states. See Indiana Dep't of State Rev., Gross Income Tax Div. V. Nebeker, 233 Ind. 58, 116 N.E. 2d 104 (1953).

are nontaxable outshipments.

45 IAC 1-1-51 clearly defines situs of intangibles. If a taxpayer has a "business situs" in Indiana and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes. Further, 45 IAC 1-1-51 states:

> If a taxpayer's commercial domicile is in Indiana, all of the income from intangibles will be taxed.

In addition the sale of stock was not reported in any other state, therefore the penalty may not be waived.

FINDING

The department finds the penalty appropriate.